

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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BARING INDUSTRIES, INC.,

Plaintiff,

-against-

3 BP PROPERTY OWNER LLC, DADONG
CATERING LLC, WESTCHESTER FIRE
INSURANCE COMPANY, DONE RIGHT
HOOD & FIRE SAFETY INC.,
AA JEDSON COMPANY LLC,

Defendants.
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Civil Action No. 19-CV-2829(JGK)(SN)

Honorable John G. Koeltl
United States District Judge

JUDGMENT

THIS MATTER having come before the Court on the Motion for Partial Summary Judgment (ECF Nos. 138-144) by defendants 3 BP Property Owner LLC (“3 BP Property”) and Westchester Fire Insurance Company (“WFIC”) (WFIC collectively with 3 BP Property, “Defendants”) and the Supplemental Motion for Summary Judgment (ECF Nos. 179-182) by defendant 3 BP Property, and plaintiff Baring Industries, Inc. (“Baring”) having opposed both motions and having itself filed a Motion for Summary Judgment on its First Claim to foreclose a Notice of Mechanic’s Lien dated and verified February 4, 2019 (the “Lien”) filed against the real property owned by 3 BP Property known as and located at 3 Bryant Park a/k/a 120 West 42nd Street a/k/a 1095 Avenue of the Americas, New York, New York, Block 994, Lot 1011 on the Tax Map of the City of New York, County of New York (the “Property”) and on the surety bond No. K15301971 dated May 19, 2019 issued by WFIC to secure any judgment Baring may obtain in this action on the foreclosure of said Lien (the “Bond”) and to dismiss 3 BP Property’s counterclaims (ECF Nos. 145-151), and the Court, for the reasons set forth in its Opinion and

Order, entered January 18, 2022 (ECF No. 165) and its Memorandum Opinion and Order, dated September 29, 2022 (ECF No. 196), having granted the motions made by Defendants and 3 BP Property, and having denied Baring's motion; and the Court, for the reasons set forth in its Memorandum Opinion and Order, dated November 9, 2022 (ECF No. 203), having awarded 3 BP Property prejudgment interest at 9% per annum on its Fees Award (as defined below), but not on its Lien Award (as defined below), and awarded 3 BP Property post-judgment interest at the federal statutory rate;

IT IS on this 17th day of November, 2022,

ORDERED, ADJUDGED AND DECREED, that Baring's First Claim against Defendants to foreclose upon the Lien and the Bond is dismissed with prejudice; and it is further

ORDERED, ADJUDGED, DECREED, AND DECLARED, that 3 BP Property's First Counterclaim is granted and pursuant to Lien Law §39 Baring's Lien is void due to its willful exaggeration; that Baring's Lien is discharged as a lien against the Property and the New York County Clerk is hereby directed to cancel, discharge, and release of record the Lien; that the Lien is void and of no force and effect, and 3 BP Property has no liability to Baring in connection with said Lien or otherwise; that the surety, WFIC, and the Bond issued by it to secure any judgment Baring may obtain in this action on the foreclosure of said Lien, is discharged without further liability and WFIC, as the surety, is released and discharged from its obligations under the Bond; and it is further

ORDERED, ADJUDGED AND DECREED, that defendant 3 BP Property Owner LLC, having an address at c/o IC US Capital Properties LLC, 3 Bryant Park, New York, New York 10036, have judgment against and recover from the plaintiff Baring Industries, Inc., having an

address at 3249 S.W. 42nd Street, Fort Lauderdale, Florida 33312, the sum of

\$ 825,599.67, representing:

1. The principal amount of \$320,356.94, representing statutory damages by which Baring's willful exaggeration exceeds the amount of the Lien pursuant to N.Y. Lien Law § 39-a (the "Lien Award");

2. The principal amount of \$516,406.15, for additional statutory damages pursuant to N.Y. Lien Law § 39-a in connection with 3 BP Property's efforts to bond and/or discharge and/or as a result of Baring's willfully exaggerated Lien (the "Fees Award"), representing \$28,192.00 paid or incurred by 3 BP Property as and for Bond premiums as of May 5, 2022, and \$477,410.06 in attorneys' fees as of December 31, 2021, \$3,045.09 in costs and expenses as of December 31, 2021, and \$7,759.00 for court reporting fees as of December 31, 2021;

3. Prejudgment interest on the Fees Award at the statutory rate of nine percent (9%) per annum pursuant to CPLR § 5001 et seq. from January 15, 2022 through November 14, 2022, in the amount of ~~\$38,708.32~~ ^{\$38,581.91};

4. Prejudgment interest on the Fees Award at the statutory rate of nine percent (9%) per annum pursuant to CPLR § 5001 et seq. from November 15, 2022 to the date of the entry of this Judgment, 11/17, 2022, at the per diem rate of \$127.33 per day, in the amount of \$254.67; and it is further

ORDERED, ADJUDGED AND DECREED, that post-judgment interest shall accrue on the total amount of the Judgment at the applicable federal rate from the date of the entry of this Judgment until such Judgment is paid and satisfied; and it is further

ORDERED, ADJUDGED AND DECREED, that costs shall be taxed in favor of
Defendants by the Clerk of this Court.

Dated: New York, New York
November 17, 2022

ENTER:



HON. JOHN G. KOELTL, U.S.D.J.